



United States
Department of
Agriculture

Forest
Service

Red Rock
Ranger District

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File Code: 2300

Date: August 12, 2011

Mr. Steve Saway
Chairman, RAC Work Group
533 Suffolk Drive
Sierra Vista, AZ 85635

Dear Steve,

Thank you, again, for coming to Sedona on June 29th to meet and discuss the Red Rock Pass Recreation Fee Proposal. There were several topics that came up during our meeting that we would like to follow-up on and provide the information you requested. Additionally, we very much appreciate the opportunity to comment on the August 11, 2011 REA Work Group (Work Group) Report that you provided in the interest of improving the Red Rock Pass Recreation Fee Proposal. It is obvious that the Work Group listened carefully during the tour and public meeting and worked hard to provide insights on how to improve the program. Our responses to the report's recommendations and advice follow the information you requested below.

Follow-Up Topics from the Work Group Meeting on June 29th, 2011

1. Consistency of the Red Rock Pass Proposal with FLREA.

The Work Group requested the Agency ensure their proposal is consistent with the Federal Lands Recreation Enhancement Act of 2004 (FLREA or REA). We agree that adherence to FLREA (and as interpreted through subsequent legal decisions) is critical, and that simplicity should be our goal as long as it does not conflict with following the law. To that end, the Proposal and our response to your recommendations and advice have been reviewed by our Office of General Council (OGC) and our Washington and Regional Offices. OGC and Forest Service staff confirm that the Proposal complies with FLREA and Agency guidelines.

2. GAO Findings related to the Agency's Management of FLREA Fee Programs, specifically as it relates to the Red Rock Pass Proposal and accounting procedures.

The Work Group requested that the Agency ensure that the Red Rock Proposal is consistent with the GAO Findings and Recommendations in their report on the Agency's implementation of FLREA, including their recommendations regarding accounting procedures. *(NOTE: There was an interest in understanding our accounting procedures for the direct costs of fee machines as they relate to the expenditure categories in REA, and whether or not we are consistent with other Agencies. Information on these accounting procedures can be found in our response to Recommendation 4.i.4 below.)* The complete GAO audit can be accessed at



<http://www.gao.gov/new.items/d061016.pdf>, and the full set of recommendations is available online at <http://www.gao.gov/products/GAO-06-1016#recommendations>. Three recommendations were directed to the Forest Service; these are provided below, along with the status as listed on the GAO website. [NOTE: The first recommendation is still open (i.e. not fully implemented yet), although we hope the recommended regulations/implementation guidance handbook will be out for public review this winter.]

Recommendation: In order to improve the Forest Service's implementation of the Federal Lands Recreation Enhancement Act and improve the accountability and controls for collected recreation fees, the Secretary of Agriculture should direct the Chief of the Forest Service to promptly issue final regulations and implementing guidance on the fee program, including detailed policy and procedure guidance.

Agency Affected: Department of Agriculture

Status: Open

Comments: The Forest Service has drafted regulations and implementing guidance for the recreation fee program and is moving them through its regulations approval process, according to a Forest Service official in June 2010.

Recommendation: To allow for public input on new fees or modifications to existing fees, the Secretaries of the Interior and Agriculture should expedite completing the steps needed for the Recreation Resource Advisory Committees and existing advisory councils to begin implementing REA.

Agency Affected: Department of Agriculture

Status: Closed - implemented

Comments: Recreation Resource Advisory Committees were formed and met to review fee proposals.

Recommendation: In order to improve the Forest Service's implementation of the Federal Lands Recreation Enhancement Act and improve the accountability and controls for collected recreation fees, the Secretary of Agriculture should direct the Chief of the Forest Service to ascertain the extent to which its units do not have effective processes and procedures for accounting for and controlling collected fees and develop guidance for implementing appropriate and effective internal controls over cash management. This guidance for implementing such controls should identify and encourage the use of best practices, such as routine audits.

Agency Affected: Department of Agriculture

Status: Closed - implemented

Comments: Forest Service updated and revised its policies and procedures for Billings and

Collections in Chapter 6530 of the Forest Service Manual, effective December 13, 2007. Forest Service also revised and clarified portions of its Collection Officers Handbook (FSH 6509.14). Among the changes to the handbook were modifications to Chapter 10 - Collection Activities, effective May 15, 2008 and revisions and clarifications to Chapter - Zero Code, effective June 18, 2008. Specifically, instructions related to conducting an audit are outlined in sections 03.7 and 04.16 of Chapter Zero Code. To augment the audit program, Forest Service senior management also assigned a full-time Albuquerque Service Center resource to monitor the fee program.

3. The Business Plan for the Red Rock Pass Program

The Work Group requested a copy of the business plan for the Red Rock Pass Proposal that was completed when the program was established (2000). An electronic version of that business plan was provided to the Work Group. The business plan is dated. We agree that an updated plan is critical to the effective and efficient management of the Fee Program. It is our intent to start the update of the business plan soon after the RAC meeting in August, and to complete the plan in 2012.

4. Requested Letters from Key Local Entities and Additional Public Comment

The Work Group requested that we seek comments on our Red Rock Pass Proposal from key local entities and that we continue to solicit feedback from the public both locally and statewide. Since the June 29th Work Group meeting, the Forest Service has continued dialogue with local governments, agencies, and organizations including ADOT, Yavapai and Coconino counties, the Department of Public Service and neighboring cities concerning their comments on the Red Rock Pass Proposal. The Forest Service has also continued to receive general public comment from the public since June 29th. Comments continue to show general public support for continuing with the Red Rock Pass Fee Program. About 76 percent of comments received between early February and late July support a fee/area program. We will update you and the RAC on August 23rd and 24th regarding the additional comments we have received, and the public outreach process.

5. Concessionaire Management of Recreation Sites on the Red Rock District

The Work Group requested information related to the recreation facilities in the Red Rock area operated by our concessionaire, Recreation Resource Management (RRM). The concession program for campgrounds and day use sites is authorized by the Granger-Thye Act (PL 81-478), Section 7. The Secretary of Agriculture may permit the use of Forest Service structures and improvements by public and private entities. Section 319 of the 2004 Omnibus Appropriation Act states the return of a commercial recreation site to the Forest Service for operation (from concessionaire operation) can only happen when the private sector fails to bid, the concessionaire terminates its relationship, or the agency revokes the permit for non-compliance.

Forest Service Response to the Work Group's Recommendations on the Red Rock Pass Proposal

This section includes the full text of your recommendations and advice (in boxes), followed by our response (in blue italics).

Recommendation 3. The Work Group believes it is important to follow these guidelines in developing recommendations for the Red Rock Pass Program (also see references 1b, 1c, and 1d):

- a. follow the law and keep it simple
- b. fees should be commensurate with the benefits and services provided
- c. fee sites must have the required amenities; fee areas must be tightly configured and amenities must reasonably accommodate the visitor
- d. fee sites or areas must reflect a substantial federal investment, provide significant opportunities for outdoor recreation, and demonstrate cultural or natural features that attract a high level of visitors
- e. fees should be seamless and not layered
- f. honor the fee prohibitions stated by FLREA, Section 3 (d), Limitations on Recreation Fees, where applicable

Response – We agree that adherence to FLREA is critical and that simplicity should be our goal as long as it follows the law. To that end, our proposal and our responses have been reviewed by our Office of General Council (OGC) and our Washington and Regional Offices to assure compliance to the law and guidelines. We have received legal advice from OGC that the Proposal is in compliance with FLREA.

Recommendation 4. The Work Group believes that the Red Rock Pass Program can be configured to meet Forest Service objectives while attracting general public support. Regarding Proposals A and B, we offer the following recommendations:

a. Hwy 179 Scenic Corridor and Oak Creek Canyon Corridor. We believe these corridors meet the criteria for a fee area. They are tightly configured and support a high level of recreation use. The Hwy 179 sites support concentrated use at trailheads that attract a high level of visitors due to the scenic features and points of interest (such as Cathedral Rock, Bell Rock, and Courthouse Butte). The Oak Creek Canyon sites support concentrated use that is primarily focused on picnicking along the creek or water play activities in the creek.

b. Baldwin Recreation Site at Oak Creek. We support this as a standalone fee site as it supports concentrated use that is primarily focused on picnicking along the creek or water play

activities in the creek.

c. Honanki, Palatki, and V Bar V Heritage Sites. We support these as standalone fee sites as they offer a cultural destination center with visitor education and interpretation.

d. Jim Thompson Recreation Site. We support this as a standalone fee site as it supports concentrated recreation use and requires special management due to its location adjacent to a Sedona residential neighborhood.

e. Boynton Recreation Site. We support this as a standalone fee site as it supports concentrated recreation use and requires special management due to cultural resources.

f. Doe Mountain Recreation Site. We support this as a standalone fee site as it supports concentrated use and attracts a high level of visitors due to scenic features and points of interest.

g. A map depicting these recommendations is attached at enclosure 1.

Response – The proposal we will take to the RAC will incorporate these recommendations. Our proposal will be the sites and areas shown in Enclosure 1.

Recommendation 4.h. Concurrent with these recommendations, we must also point out that a vocal element of the public believes that FLREA prohibits fees for certain activities (see FLREA, Section 3 (d)). While the Forest Service has cleared its proposed fee areas and sites with the Office of General Counsel, there is still some concern by the public that certain activities must remain free to the public in order to comply with FLREA. Although the Work Group acknowledges the Forest Service legal position and can support the fee areas and sites as proposed in paragraphs 4a through 4g above, we believe the Red Rock Ranger District should consider providing free permits for parking in fee areas/sites while engaged in backcountry activities in the Forest. The objective would be to garner better public support for the program and to improve public enjoyment of the forest. This could be done in collaboration with a diverse public group (see paragraph 4i(5) below) and implemented for a limited period to test the concept. Examples of free activities that could be allowed for Red Rock Pass fee areas/sites:

(1). General access to the forest. If a forest visitor wishes to access the forest (beyond the intense use area), consider issuing a free parking permit for backcountry access. Example: a backpacker wishes to park, hike, and camp overnight in a remote area of the forest using a recreation fee site or trailhead for access to the trail. A free (backcountry access) parking permit could be established for this activity.

(2). Walking or hiking through the forest without using the facilities and services. Example: a hiking group wishes to park at two different trailheads (fee or no fee) to set up a shuttle. They hike from one trailhead to the second trailhead and most of their hike is outside of the intense use area. A free (backcountry access) parking permit could be established for this activity.

(3). Incidental parking for scenic viewing or photography (we understand the Red Rock Pass is not required for this activity).

We appreciate the fact that a majority of the District's trailheads will remain free and enable the public to access the backcountry without a Red Rock Pass. However, some specific areas are not easily accessible unless one hikes from a fee trailhead.

Response – The agency agrees that some members of the public are concerned about free opportunities for public access to the National Forest, walking through the area, use of the backcountry and incidental parking and other undeveloped recreation activities.

The Forest Service's position, which has been upheld in several court cases, is that the Agency can charge for use of an area that meets all the statutory requirements. This interpretation is consistent with the decision reached by the late U.S. District Judge John Roll in the case of the U.S. vs. Christine Wallace in 2007. Judge Roll stated that the ability for the Agency to administer a fee program is an important factor that can justify the decision to charge for all public use in areas or sites regardless of the actual activities the visitors are participating in. This position was reinforced in the Mount Evans case. In that case the judge determined that "the REA provision for recreation fee authority is defined by the nine characteristics stated in Section 6802(f)." The judge also determined that as long as the nine are present within the area, a standard amenity fee may be collected. This opinion was recently upheld by the Tenth Circuit Court of Appeals (August 9, 2011) "... in this area, the amenities come as a sort of package deal: paying the fee entitles a visitor to use them as much or as little as she chooses. So whether this results in the Forest Service charging for an activity that's supposed to be free under § 6802(d)(1) depends on what a particular visitor chooses to do. If a visitor drives close enough to Mount Evans, parks to have a picnic on the side of the road, and then calls it a day, she'll have paid the amenity fee only for picnicking and undesignated parking — activities for which no fee is supposed to be charged." The fee areas are now drawn tightly enough to support a presumption that those who are parked within them are using the recreational facilities and services they provide.

The Proposal provides for expanded opportunities for these activities without requiring the payment of a fee. In addition, there are numerous opportunities for recreating in the vicinity of the fee area without paying a fee. Those who are merely hiking through, for example, do not need a Red Rock Pass and won't be cited if they don't have one, as long as they don't park within the fee areas. Since this is a fee that is enforced by a permit displayed on an individual's vehicle, visitors within these areas without vehicles would be free from these requirements as well.

The Agency does not have the resources to patrol these areas and make a case by case determination as to the actual activity of the visitor's uses and check for special free passes and cite each person in the area who is recreating without having displayed a pass. Allowing for an activity-based free pass could undermine the fee program, as it would be nearly impossible to verify whether those requesting the pass in fact qualify for free use.

The District is willing to explore options to further address the concern about providing additional free opportunities, particularly for activities suggested in collaboration with a diverse public group, as long as they are consistent with the Act.

Recommendation 4.i. We also recommend the Red Rock Ranger District consider adopting the following suggestions to the extent possible within legal constraints. These suggestions are largely based on public comments or concerns we heard during the field trip and meeting in Sedona.

4.i.1. Provide a schedule of additional “no fee” days that will support greater opportunities for low income and minorities to visit the area.

Response – Yes we agree. We can do a better job of making sure our public is aware of the “no fee” days, and we can offer more convenient free days that encourage the use of the fee area by a wide range of the public. We also believe this aligns with President Obama’s America’s Great Outdoors Initiative, especially in supporting the vision of “Connecting Americans to the Great Outdoors.”

Recommendation 4.i.2. Provide a more seamless Red Rock Pass by eliminating separate concessionaire fees for standard amenity fee sites (such as West Fork Oak Creek, Grasshopper Point, and Crescent Moon day use sites). (We understand that the Forest Service cannot unilaterally do this, but we believe it should be pursued as opportunities arise.) In the meantime, work to re-instate the Grand Annual Pass that can be used for both Forest Service and concessionaire standard amenity fee sites.

Response – We definitely heard from the public, particularly our local public, that they would like a simpler program, i.e. have all of the day-use recreation sites in the Red Rock Area under one fee program. We agree that this would simplify the program and eliminate the appearance of the layering of fees. As you state, the Agency does not have the authority to unilaterally withdraw concessionaire sites from the Granger Thye (GT) program. The authority to “give-back” established concessionaire sites is granted solely to the concessionaire in the GT Legislation. The Agency must re-offer these returned sites, through a prospectus, to other potential concessionaires, and only if there are no interested parties can these sites be managed as non-concessionaire sites. Given the public interest in this issue, we can do a better job of communicating this situation.

We have also heard from the public, particularly locals, that they would like us to re-establish the “Grand Annual Pass” that covers both concessionaire and Red Rock Pass day use recreation sites. We agree that this pass would serve to simplify the program. We are working with our Washington Office, our partners, and the concessionaire in an effort

to re-establish the Grand Annual Pass. At this point, the details of how that program will be implemented have not been determined, but discussions are underway, and we will continue to work to re-establish this program.

Recommendation 4.i.3. Encourage and expand volunteer programs that will enable participants to earn free passes.

Response – Yes, we agree. We currently have an outstanding volunteer program on the Red Rock District, but there is always the opportunity to expand the program, to increase awareness of that program through better publicity, and to ensure that anyone who wishes to earn a free Red Rock Pass through volunteer effort has that opportunity. This could be a good topic for a diverse public group to discuss and provide their thoughts on how this might be implemented.

Recommendation 4.i.4. Continue to ensure that fee expenses comply with the 15 percent limit on administrative overhead. Due to the relatively low Forest Service take of revenues derived from fee machines, work to re-negotiate fee machine contracts or better yet, phase out the fee machines over time and emphasize other options for acquiring the Red Rock Pass.

Response – To be consistent with other federal agencies, we define fee machine expenses as a direct operating cost. While we are in compliance with FLREA Administration, Overhead, and Indirect Costs which state, "The Secretary may use not more than an average of 15 percent of total revenues collected under this Act for administration, overhead, and indirect costs related to the recreation fee program...", we are committed to seeking improvements and cost efficiencies in our direct operating costs including fee collection methods. We will reevaluate the use of fee machines, as well as attempt to renegotiate the fee machine contract, as opportunities present themselves. While fee machines provide a convenience to visitors, we recognize there are pros and cons to their use.

Recommendation 4.i.5. Establish a diverse public group with balanced representation to provide a public forum for discussions on future fee proposals. Get early public participation and buy-in before finalizing any future fee proposals. Ensure that there is public support before new areas are developed. Consider whether it is more appropriate to keep the recreation setting less developed and more primitive.

Response – One of the key messages from our public involvement on the Red Rock Pass is that people are interested and passionate about recreation management in this area, and there is a diversity of opinions about that management. We agree that the establishment of a diverse public group for collaboration would be valuable. The intent is that the public

would work collaboratively with us to implement these recommendations as well as provide an on-going beneficial dialogue about the Fee Program. We would need to strategize how to implement this idea, particularly to ensure we are meeting all FACA requirements, and we would need to take the time to ensure that the foundation for this effort is strong and sustainable.

Regarding the amount and character of recreation development, this is an important aspect for the Forest Service to monitor and ensure compliance with Forest Plan direction, protection of the area's natural and cultural resources, and sensitivity to visitor and local desires.

Recommendation 4.i.6. Discontinue the practice of allowing commercial buses free use of recreation fee sites for their clients. This use is an unfair burden on the Red Rock Pass Program and adversely impacts forest visitors who pay the fee but are frustrated by congested sites and overcrowding due to tour buses unloading their commercial passengers to use the facilities in the fee sites. Recommend these commercial bus companies be placed under a recreation special uses permit as soon as possible. In the meantime, we applaud and support your use of interim guidelines to limit the frequency and numbers of commercial bus visits to fee sites.

Response –We agree and want you to know that placing commercial buses under special use permit is a priority for the District. The Red Rock Ranger District has one of the busiest commercial tour programs in the entire National Forest System with jeeps, buses, metaphysical, wedding, hiking, ATV, balloon, and vortex activities under special use permit. This program generates an average of \$500,000 in fees each year to the District that are used to manage the program. In addition, these funds can be used for visitor services and facilities tied to commercial tours, which also benefit non-commercial recreation users. This revenue funds the staff that administers over 30 special use permits, inspects and enforces permitted activities and deals with the great number of illegal tour activity in Red Rock Country. The commercial bus permitting is scheduled for our 2014 program of work, because there are two other special use permit issues that we have set as a higher priority. To develop the appropriate bus permit system, we need to monitor commercial bus use and ensure management decisions are both compliant with Forest Plan direction as well as responsive to public interest. In the interim we have taken steps to lessen the impact of these buses including severely limiting the parking available to them at Bell Rock Vista and Oak Creek Vista, prohibiting idling, and prohibiting them from using other recreation sites.

Recommendation 4.i.7. Consider monitoring numbers of visitors on trails using volunteers and other resources. Consider establishing a daily visitor quota for trails that receive high levels of use. Encourage visitors to seek other, less intensely used trails and destinations.

Response – We recognize that visitor quotas are a valuable tool to address high use levels. This too may be a topic that could be discussed by a diverse public group/forum. The Forest Plan revision process currently underway is another important venue to recommend and discuss appropriate visitor use levels for the Red Rock area. Our current Forest Plan encourages opportunities to connect people with nature, with a focus on highly used sites such as those in Red Rock, to accomplish this. Overcrowding and its effects are important for the Forest Service to monitor to ensure that recreation quality is not suffering. Along with this, the Forest Service needs to engage the public in order to better understand where changes may be needed.

Recommendation 6. The above recommendations were developed based on the existing environment faced by the Red Rock Ranger District, i.e., declining Forest Service budgets, growing visitor use levels and growing costs of operations and maintenance. However, we would like to suggest a way to reduce the reliance on recreation fee revenue. How can this be done? We believe that the Forest Service should continue and enhance its strong partnership with the City of Sedona for operations and maintenance related to National Forest recreation services near the City. As stated in the City of Sedona's Community Plan, forty-nine percent of the land area within its incorporated boundaries is National Forest land. Many Forest trailheads are located next to residential neighborhoods including Thunder Mountain, Broken Arrow, Soldier's Pass and Andante trailheads. The management of recreation use and traffic in those neighborhoods requires coordination with the City to reduce impacts and maintain services. Trailheads within the Red Rock Pass Program can be considered de facto "City" recreation sites for Sedona residents. The Forest provides substantial benefits to the City of Sedona in terms of open space, recreation, scenery, commercial tour use, and tourism revenues. We believe the City of Sedona and the Forest Service can enhance their win-win partnership to benefit visitors and residents. It should be noted that similar partnerships are being used in other municipalities, for example Salt Lake City, Utah which is helping to sustain recreation and protect an important public watershed in the Wasatch Canyons area.

Response – The District agrees to enhance our engagement with local government to explore partnership opportunities with a focus on sustainable public land recreation. Critical to this will be assuring the partnership meets Forest Plan objectives and helps meet both the needs of visitors to the area and those of the local community.

Again, thank you for your thoughtful recommendations and advice. I appreciate the effort that the Work Group members put into the field trip, public discussion and business meeting. If you have questions or concerns regarding our response, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Dornier". The signature is stylized with large, flowing loops and is positioned below the word "Sincerely,".

HEATHER C. PROVENCIO
District Ranger

CC: Kristin Bail, Deputy Forest Supervisor, Coconino NF; Francisco Valenzuela, FS Region 3
Director of Recreation, Jennifer Burns, Red Rock Ranger District Recreation Staff Officer.